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COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention
of Discrimination and
Protection of Minorities
Forty-seventh session
Item 19 of the provisional agenda

FREEDOM OF MOVEMENT

Written statement by the Society for Threatened Peoples,
a non-governmental organization in consultative status
(Category II)

The Secretary-General has received the following communication, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[25 July 1995]

Refoulement of Tibetan refugees

1. For a refugee or a stateless or an "alien" person the right of the freedom of movement becomes a crucial right, particularly if the person is escaping from a regime which occupies and rules his or her country with ruthless persecution. Such is the case for Tibetans who escape over the mighty Himalayas into Nepal and India these days, putting their lives at risk from both nature and the concerned authorities. The fate of Tibetan refugees has become precarious as "receiving" countries, notably Nepal and India, are not Contracting States to the Convention relating to the Status of Refugees. It is further unfortunate that the United Nations High Commissioner for Refugees does not recognize Tibetans as refugees.

2. Freedom of movement has been recognized as an important human right when the Universal Declaration of Human Rights was proclaimed on 10 December 1948. Articles 13, 14 and 15 of the Declaration clearly define the meaning of this freedom, including the right to leave any country, including one's own, and to return to that country. The right is further emphasized in article 12 of the International Covenant on Civil and Political Rights. Furthermore, the Convention relating to the Status of Refugees prohibits the expulsion or refoulement of refugees entering a given country since the refugee's "life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion" (art. 33(1)).

3. In a statement to the fifty-first session of the United Nations Commission on Human Rights this year, Mrs. Sadako Ogata, the United Nations High Commissioner for Refugees, said: "The heart of refugee protection - asylum and non-refoulement - stem from the basic right of all individuals to seek and enjoy asylum from persecution, as clearly embodied in the 1948 Universal Declaration of Human Rights. Similarly, the right to enjoy the protection of one's own country, and to return freely to it, is fundamental to the Declaration."

4. Today, according to information received by this organization, there are approximately 130,000 Tibetan refugees who are living in more than 30 countries, the majority of them in India and Nepal. The Kingdom of Nepal is today the second home for more than 15,000 Tibetan refugees who have lived in the country for the past 35 years. Harassment of Tibetan refugees in the Kingdom has a long history although the carpet industry started by Tibetan refugees in the early 1960s is today the country's second most important foreign investment sector.

5. During the past 15 years more than 10,000 Tibetan refugees have managed to escape the harassment of both Chinese and Nepalese authorities and reach India where their needs are cared for by the Tibetan government in exile. The majority of these refugees, in fact over 70 per cent, are children and students escaping from Tibet for a better education (religious and modern). Since 1989, these new Tibetan refugees have been thoroughly screened by the UNHCR office in Kathmandu. Between August and December 1990, this office documented 1,386 Tibetan refugees who reached Nepal, more than half of whom were monks and nuns.

6. Today more than 90 per cent of the Tibetan refugees attempt to escape into Nepal and India (very few directly) without valid travel documents. This situation arises due to severe restrictions on the issuance and prolonged handling of such documents by the Chinese authorities. It is common for Tibetans in Tibet to wait for years and years in order to get a passport since a long and never ending process has to be followed. An applicant is required to obtain at least seven different local, district, provincial and other governmental authorizations to travel abroad.

7. Furthermore, the Chinese authorities have repeatedly used all their means to bar Tibetans from escaping into Nepal or India. Tibetan escapees who have been apprehended by the Chinese authorities during the past 35 years have faced routine persecution culminating in long prison sentences. Many of these Tibetans were charged with attempting to take out "State secrets" to the

outside world, particularly to the Tibetan government in exile. Maximum restrictions on the freedom of movement of Tibetans is one of the ways through which the Chinese authorities expect to censor all kinds of information on the political situation in Tibet from reaching the outside world.

8. Nevertheless, Tibetan refugees continue to flee from Tibet today risking arrest, torture, harassment and summary execution from both the Chinese and Nepalese authorities. Every year, thousands of Tibetans aged between 6 and 60 risk their lives trekking across the mountains in temperatures that reach 20 degrees below zero. They attempt the 1,600 mile journey on foot to escape Chinese oppression and to seek an audience in India with the Dalai Lama, Tibet's political and spiritual leader. 1/ A number of refugees who complete the journey over the Himalayas lose their toes or fingers, and sometimes their legs, to frostbite. And, when Tibetan refugees are caught by Nepalese police or border guards they are not only robbed of their few belongings (mainly cash and valuables) but also severely beaten and imprisoned before deportation.

9. There have also been extrajudicial killings of Tibetan refugees by both Chinese and Nepalese border forces. In 1989, The Statesman, an Indian daily in New Delhi, reported that seven Tibetan refugees were shot dead by Chinese border guards in the Ladakh-Tibet border region of Chushul. During the early hours of 3 January 1992 a Nepalese policeman shot and killed Tenzin, a 22-year-old Tibetan refugee, at point-blank range in the Nawoche region of Sholu-Khumbu valley in Nepal. The Nepalese Home Ministry official, Mr. R.N. Vaidya, who confirmed the incident on 8 January, said, however, "The police fired on a group of violent intruders who had crossed into Nepal from Tibet across the 19,685-foot Manpa La pass: one of them was found dead later in the morning." Again on 26 August the same year, 18-year-old Rigzin Tsering, a Tibetan monk, was shot twice and killed by the Nepalese border guards in the same region.

10. One of the most serious concerns over the fate of Tibetan refugees entering the Kingdom of Nepal has been the country's total disregard of international law concerning the treatment of refugees. The United Nations Convention relating to the Status of Refugees states in article 33: "No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion." Nepal is not a Contracting State to this Convention. However, as a respectable member of the United Nations, it has the customary obligations to respect the Universal Declaration of Human Rights. And, as a country which has ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Nepalese authorities must ensure that no refugee entering their country is subjected to torture.

11. Over the past years, the Nepalese authorities have routinely deported Tibetan refugees from Nepal. Documented cases of repatriation of Tibetan refugees by Nepal were as follows: 26 on 17 September 1988; 6 on 30 December 1988; 43 on 7 August 1990; 10 on 11 December 1990; 32 between 16 November and 21 December 1991; 56 between 19 January and 25 June 1992; 20 on 23 April 1995; 33 on 5 May 1995; and 31 on 17 and 18 June 1995. According

to unconfirmed information, there were reports of up to 20 individual deportations a month during 1993 and 1994.

12. There is documented evidence to prove these events in Nepal. On 14 June 1993, the International Campaign for Tibet, a human rights organization based in Washington D.C., stated through a press statement that "a large number" of Tibetan refugees have been "forced" to return to Tibet from Nepal. The organization cited official Nepalese documents in its possession as a proof of this situation. The documents were on Nepalese Ministry of Home Affairs letterheads and were mostly signed by Nepalese and Chinese officials supervising the deportation, the statement added. Many of these documents said that the Tibetan refugees were being sent back "for action and punishment by the laws and regulations" of China. One of the documents even stated that the refugees "do not like Chinese rule and regulation", providing clear evidence that the Nepalese were deliberately deporting and pointing out political refugees, in direct violation of international law.

13. The latest deportation in two separate groups of 31 Tibetans took place on 17 and 18 June after the Tibetan refugees were arrested at a place called Butiban in Baglung district on 11 June. There are now serious concerns over the fate of these 84 Tibetans who faced repatriation from Nepal, particularly on the whereabouts and well-being of three former political prisoners (Dawa, Tsewang Paldhen and Thupten Tsering, all male) in this group. Due to their background of political detention, the Chinese authorities will consider their attempted escape as a planned political activity to be dealt with harshly. The local representative of the United Nations High Commissioner for Refugees, Mr. Tabir Ali, said that there was concern about what he called "the organized manner" in which the Tibetans were being sent back to Tibet. 2/

14. The Society for Threatened Peoples expresses its deep concern over the continued denial of the freedom of movement to the Tibetan people by the Chinese and Nepalese authorities. The Tibetan people who continue to remain under foreign occupation should receive fair treatment whenever they choose to travel to escape from Chinese persecution. In this regard, we urge the Nepalese Government to immediately stop deporting Tibetan refugees entering its territory. We also call on the United Nations High Commissioner for Refugees to provide all necessary assistance to Tibetan refugees as the agency provides for other refugees in the world. The freedom of movement of all human beings should be respected without discrimination based on political pressure.

Notes

1/ Nick Gray, "Escape from Tibet", Life, 19 March 1995.

2/ "Nepal deports more than 100 Tibetan refugees", Voice of America, 25 May 1995, New Delhi.

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COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention of
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Forty-seventh session
Agenda item 6

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION AND OF APARTHEID, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII)

Written statement submitted by International Educational Development, Inc., a non-governmental organization on the Roster

The Secretary-General has received the following communication, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[25 July 1995]

The situation in Sri Lanka

1. International Educational Development/Humanitarian Law Project fervently hoped that the election of the Peoples' Alliance Government in August 1994 and the later election of the new President of Sri Lanka would result in a viable peace process to end the 40 year oppression of the Tamil people and their justifiable armed resistance. We applauded the Peoples' Alliance platform, clearly supported by the majority of the Sinhala people of Sri Lanka, in which a commitment to the peace process was fundamental. During her successful campaign, candidate Chandrika Kumaratunga proclaimed that her first priority

was to restore peace. Following her election, a Sinhala from Sri Lanka and a long-time friend of our organization hand-delivered a letter from our chief representative at the United Nations to President Kumaratunga in support of the peace process.

2. Our hopes were weakened by a progressive retreat from the peace process by President Kumaratunga and her Government shortly after proclaiming in a BBC interview "most armies prefer war to peace - not the soldiers at the base but those in Colombo at the top. We hope and we believe that we have better control of our armies". It became apparent that her Government did not have full control over the Sri Lankan armed forces. For example, as the peace talks continued, the promised removal of the ban on essential goods into the Tamil area failed to be listed in the gazette; the Sri Lankan Government procrastinated and thwarted the flow of essential goods that had ostensibly been removed from the banned list; the promised electrical supplies never arrived; the Sri Lankan Navy imposed restrictions on food-fishing in spite of an announced relaxation of the former ban; the Poonakari Camp, used by the Sri Lankan Army to restrict the movement of Tamil civilians, continued to operate; new army camps were established in the East; new settlements of Sinhala people were opened in the East.

3. More revealing of the Government's retreat from a peace process was the choice of the President's delegates to meet with Liberation Tigers of Tamil Elam (LTTE) leaders. Said one political columnist in the Sunday Leader (Colombo, 21 May 1995): "The LTTE is known to have said that the President had two senior Ministers beside her in her discussion with Tamil groups who were voting with her in Parliament, she sent only as delegates to negotiate an end to a war that has cost 30,000 lives her architect, her banker and her clerk. The only person she forgot to send was her cook". The question of the calibre of delegates was also raised by opposition leader Ranil Wickremasinghe, who in a speech in Parliament on 12 May 1995 (cited in The Island, Colombo, 13 May 1995) acknowledged that the delegations to the peace talks had become noticeably less experienced. According to Wickremasinghe, there were even competing delegations in Jaffna at one time. He concludes: "The important question is, why was the Cabinet left out of this process? The Cabinet was left in the dark and the peace process was handled by the Kitchen Cabinet".

4. A climate of increasing apprehension among the Tamil people led to out-and-out disillusionment when several offers of the LTTE leadership for a federal-type political structure were met with silence from the Sri Lankan Government. With no proposal on the table from the Government and with failure to carry out the main components of the cessation of hostilities agreement, the LTTE leadership issued notice in mid-March that without urgent action to address some of these problem areas, the LTTE would consider the cessation of hostilities to have expired. The LTTE gave a two-week deadline, later extended by another three weeks. Because there was still no effective response from the Sri Lankan Government, the LTTE considered the cessation of hostilities agreement expired as of 19 April. Armed conflict between the Sri Lankan armed forces and the LTTE and Tamil people commenced when the Sea Tigers sank two naval gunboats in Trincomalee harbour.

5. Since the commencement of hostilities, Tamil civilians have been the main target of military operations by the Sri Lankan forces. For example, between 30 May and 14 June, the bodies of 12 Tamil youths were found with their hands tied behind their backs and signs of starvation and suffocation in water. Throughout the rest of those two months, a number of Tamil young men and women were found killed, with obvious signs of torture. The Rev. Fr. Jesuthasan was shot in the Eastern province. A number of fishermen have either been killed or disappeared. A large number of Tamil youths have been taken into custody. A reporter for the Guardian (London) was a witness to the summary execution of three Tamil men and the escape of a fourth (a 17-year-old student) at Jeyanthipuram camp. In her report of 3 June, she stated that the police also fired into Holy Family Convent and had been carrying out a concerted campaign of terror in the area.

6. In a 48-hour period beginning 9 July, as part of a military operation called "Operation Leap Forward", the Sri Lankan forces:

(i) Bombed St. Peter's Church in Navali killing more than 130, mostly women and children seeking shelter;

(ii) Bombed the Manipay Hospital, injuring patients and forcing the relocation of many other patients;

(iii) Carried out other indiscriminate military operations from army camps, jet bombers and naval vessels in heavily populated areas in the north.

Regarding the bombing of St. Peter's Church, Pope John Paul II said "I share the grief of those who lost their loved ones in the bombing of the church and school of Navali ... Already in the past I have urged all sides to choose the path of dialogue to avoid further useless trials for that dear country". As a further element to this atrocity, the Government of Sri Lanka had told people to take shelter in churches and schools before the attack.

7. Since the renewal of hostilities and as a direct result of the indiscriminate targeting of civilians, there are now more than 350,000 newly displaced people in dire need of means of subsistence and international protection. Jaffna Hospital is now attempting to assist more than 3,000 civilians wounded in repeated bombing attacks on civilian areas. In a 12 July 1995 letter to President Kumaratunga, the Honourable Jean Augustine, MP, Parliamentary Secretary to the Prime Minister of Canada stated:

> "It was with dismay, horror and sadness I read of the bombing over the Jaffna peninsula, with over 210 civilians killed, more than 250 grievously injured and with over a quarter of a million persons displaced. Such indiscriminate killings and hostilities cannot be tolerated by people who care for peace in our world. Do stop the suffering and bloodshed. The world community is shocked by this barbarity."

8. International Education Development is also shocked by this barbarity and joins Mr. Augustine in affirming that the world cannot tolerate this. We urge the Sub-Commission to condemn Sri Lanka for these clear violations of the Geneva Conventions. We also request the Sub-Commission to call on all parties to the conflict to respect fully all provisions of humanitarian law applicable to this conflict. Finally, we urge the Sub-Commission to encourage peaceful resolution of this conflict in a process involving the parties to the conflict - the Government of Sri Lanka and the LTTE. United Nations action in El Salvador is a useful model for assisting in the resolution of the conflict in Sri Lanka. The Sub-Commission could also call on the High Commissioner for Human Rights or the Secretary-General to use "good offices" with the aim of renewing the peace process, including the achievement of a genuine cease-fire.

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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION AND OF APARTHEID, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII)

Written statement submitted by the Transnational Radical Party, a non-governmental organization in consultative status (Category I)

The Secretary-General has received the following communication, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[26 July 1995]

Question of human rights and fundamental freedoms

1. The Transnational Radical Party is an international organization dedicated to the promotion of universal human rights and an international legal order through the development and reform of the United Nations along democratic lines. Among other objectives is support for the abolition of the death penalty and the establishment of a permanent criminal court.

2. The principle of non-violence and its source has connected our organization to the problems, struggles and aspirations of the oppressed all over the world. The non-violent struggle of the six million Tibetan people is one of them. During the past many years we have undertaken various activities to create global awareness about the human rights abuses taking place in Tibet.

3. The Tibetan people should be commended for carrying out a struggle based on the principle of non-violence, particularly when very few have followed this path to achieve their freedom. In this regard, it is appreciated that the Sub-Commission on Prevention of Discrimination and Protection of Minorities adopted resolution 1991/10 on the situation in Tibet on 23 August 1991. Particularly, when it has expressed grave concerns about the "threats to the survival of the religious, cultural and national identity of Tibetans".

4. Unfortunately, the systematic violations of human rights and fundamental freedoms in Tibet remains a never-ending phenomenon. The Chinese authorities continue to deny the Tibetans those rights that have been enshrined not only in their own "constitution" but also in the Universal Declaration of Human Rights. It is alarming that an increasing number of political detentions have taken place in Tibet over the past few years and that more than 10 Tibetan political prisoners have died while in custody or immediately after their release since 1987. Amnesty International has already identified 628 Tibetan political prisoners detained in Tibet at the end of 1994. The enforcement of the death penalty in Tibet remains another grave concern, particularly since it is used to suppress political opinion.

5. The report (E/CN.4/1995/91) of Mr. Abdelfattah Amor, the Special Rapporteur of the Commission on Human Rights on religious intolerance to the Commission at its fifty-first session pointed out that the religious sentiments and traditions of the Tibetan people have not been given enough attention by the United Nations. Although the Special Rapporteur visited Tibet for only two days, he was able to personally verify the situation and therefore make his recommendations that the ban on access to places of worship for former political prisoners be lifted by the Chinese authorities. The Rapporteur's call for legislation to secure the rights of everyone to practise their religion, including juveniles and members of the Communist Party and of other organizations, is another contribution towards ending the violations of religious freedom in Tibet. The Chinese authorities continue to interfere in the practice of Tibetan Buddhism, undertaking massive measures to suppress religious freedom in Tibet. The case of the new Panchen Lama who was recognized by the Dalai Lama on 14 May 1995 is one clear example.

6. The European Parliament, on 13 July 1995, following the initiative of the European Parliamentarians Marco Pannella, Pierre Pradier, Gianfranco Dell'Alba, Noel Mamer and Dominique Saint-Pierre (Transnational Radical Party Members - Group ARE), James Morehouse (Group PPR), and Adelaide Aglietta (Group Green), adopted a revolutionary resolution on Tibet. The resolution, that obviously the Transnational Radical Party supported, called on the institutions of the European Union, on the one hand, to support any move to settle the Sino-Tibetan problem by means of a political dialogue and on the Chinese Government and the Tibetan Government-in-exile, on the

other, to begin negotiations along those lines, and, in this context, furthermore, expressed its support for the efforts of the Dalai Lama to restore by peaceful means the cultural and religious freedom of the Tibetan people, as well as their political autonomy. The resolution adopted by the European Parliament, which for the first time took an official stand on the situation in Tibet, also expressed grave concerns about the disappearance of the six-year-old Panchen Lama by calling on the Chinese authorities to ensure that Gedhun Choekyi Nyima and his family be immediately released and allowed to return to their village.

7. During the past two months, the Chinese authorities have failed to provide any information about the well-being and whereabouts of the Panchen Lama, causing serious tensions in and outside Tibet. What the Chinese authorities are committing is a direct interference in a religious matter over which the Dalai Lama has prerogative authority, thus making the whole issue a political one.

8. If the civil and political rights of the Tibetan people have been violated, so have their economic, social and cultural rights. During the past 45 years Chinese propaganda of "economic development" in Tibet has only encouraged bringing millions of Chinese settlers to compete with the Tibetan people. The benefits of internationally aided projects, including those of the United Nations, are now said to have gone to Chinese settlers rather than the Tibetan people. World Food Programme project 3357 in the Lhasa River Valley is one example. Local people who have been living for generations in the project area were going to be forced to vacate their houses in order to accommodate Chinese settlers. The Sub-Commission reports on the human rights dimension of population transfer and the implantation of settlers are welcome and it is hoped that the final report will study the devastating situation in Tibet.

9. The Transnational Radical Party is of the opinion that countries who ratify United Nations conventions must ensure that the conventions are fully implemented. In this regard, we are concerned that a number of countries have implemented these conventions only in word. It is also most unfortunate that such countries repeatedly fail to submit their reports in due time, if at all. These issues should be given serious attention by the Sub-Commission and the Commission on Human Rights.

10. The People's Republic of China has ratified a number of United Nations conventions, including those on torture, women, the rights of the child and racial discrimination. However, the Chinese authorities have been systematically violating the above rights in Tibet over the period. Tibetan political prisoners, some as young as 12, have been detained, according to Amnesty International.

11. As for the rights of Tibetan women, cases of forced abortions and sterilizations in Tibet are now well documented. It is further alarming that the Chinese authorities instruct that "in order to reduce the population, use whatever means you must, but do it. With the support of the Party Central Committee, you should have nothing to fear". According to Amnesty International, Tibetan women constituted "the largest group of female political prisoners" detained by the Chinese authorities. Although China is

hosting the Fourth World Conference on Women, Beijing made sure that Tibetan women in exile are denied accreditation. This was clear from the substantive session of 1995 of the Economic and Social Council held recently at Geneva, at which the Council decided to deny accreditation to the Beijing conference to nine Tibetan or Tibet-related NGOs. The Tibetan Women's Organization in Switzerland whose accreditation was recommended by the Conference secretariat called this decision "discriminatory and political".

12. The Sub-Commission on Prevention of Discrimination and Protection of Minorities must pay serious attention to the deteriorating situation of human rights in Tibet and China. If the international community wishes to ensure that human rights and fundamental freedoms of the Tibetan people are protected, the Sub-Commission must discuss the situation in Tibet on its agenda. It should recommend, furthermore, the appointment of a special rapporteur to investigate the human rights situation in Tibet and China.

13. The Transnational Radical Party is trying to create the premises for a peaceful resolution to the Chinese-Tibetan question. A solution that would provide for the autonomy of Tibet can be found through the opening of a dialogue of mutual consensus which would put an end to the persistent violations of human rights occurring in Tibet. However, such solutions could result only from earnest negotiations and it is deplorable that the Chinese Government has given no positive response for the past 15 years. Furthermore, the Transnational Radical Party would like to propose an international massive "world Satyagraha" for peace and democracy in Tibet and in China. A Ghandian Satyagraha chosen with great prudence, following the principles of the Declaration of Human Rights and the relevant United Nations resolutions along the guidelines already introduced by the Dalai Lama himself.

14. In conclusion, the Transnational Radical Party once again joins with parliamentarians all over the world in their resolution urging the People's Republic of China to stop immediately all policies and practices which violate the human rights and fundamental freedoms of Tibetans, including, in particular, the population transfer and to begin decolonization in order to begin sustainable development of the entire area.